IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (LODGING) NO.2724 OF 2006

Urja Developers & Beautification
Private Limited — Petitioner

vs.

The State of Maharashtra & ors. — Respondents

Mr.P.S.Dani i/b.Mr.K.S.Dewal for the petitioner.

Mr.Milind More, AGP for respondent no.1.

Mr.P.P.Chavan i/b.Mr.V.M.Bhate for respondent no.2.

CORAM : F.I.REBELLO &
ANOOP V. MOHTA,JJ.

DATED : 22nd December, 2006

P.C.

The petitioner has challenged the tender notice issued by Maharashtra State Road Development Corporation Limited (MSRDC) for leasing the right to display advertisement on hoardings at Mahim Interchange on Built Operate and Transfer (BOT) basis, for five years lease/contract period on "As-is-where-is-basis" and "As-is-where-is-condition".

2. The petition was filed on 27th November 2006. On 1st December, 2006 this Court has directed the respondents to maintain status quo as existing at 1.49 p.m. because that was the last date of submission of the sealed offer from the public, upto 15.00 Hrs.

3. Respondent no.2-MSRDC by its reply resisted the petition and stated that "the present petition in respect of the leasing of the right to display advertisement on hoarding on the 'Unipole' at Mahim Interchange Segment-3 on BOT Basis is a separate and distinct work/contract than the work/tender for beautification/landscaping and maintenance thereof with advertisement right underneath the Mahim Interchange at Segment 2, 3 & 4 which has been allotted to the petitioner. I say that the hoarding on Unipole in respect of which the present tender has been issued, is in existence for the last 5 years i.e. even prior to conceptualization of beautification/landscaping of Segment - , 3 & 4 which has been awarded to the petitioner in March 2006. I say that the contract period of the present advertisement agency in respect of the said hoarding on the said Unipole was to expire on 31st October 006, MSRDC had invited the tender in October 2006 for a fresh lease in respect thereof. It may be noted that the said tender notice has been issued about six months after the contract for beautification/landscaping and maintenance thereof with advertisement right underneath the Mahim Interchange at Segment 2, 3 & 4 had been awarded to the petitioner. Apart from the said Unipole in respect of which tender has been invited in Oct. 2006, there are four other

hoardings in segment 3 and one Unipole in segment 4 which have been allotted to different agencies. MSRDC is getting an average revenue of about Rs.27 lakhs per annum from all these hoardings. These six hoardings could never have been or were never a part of the work awarded to the petitioner."

4. The respondents further stated that "the petitioner has suppressed the said fact of existence of the other five hoardings from this Hon'ble Court whilst challenging the present tender notice. The MSRDC has allotted these six hoardings to different agencies wherein the said agencies have to construct a structure to place their advertisement.

5. The petitioner by its letter dated 13th September 2006 requested the allotment of the said Unipol to the petitioner as the said Unipol was never the part of the petitioner's contract nor it was intended to be sold. After going through the agreements and other documents on record, it is also clear that at no point of time there was any agreement or impression was created as regards the existing hoardings would be included in the contract with the petitioner. The existing hoardings are not the property of the MSRDC and, therefore, MSRDC cannot hand over the same to the petitioner.

6. The present advertisement is also refers the condition of "as and where is and as and where is condition". Therefore, the petitioner has failed to support his case based on the documents filed along with the petition to claim any right in question. The impugned tender notice as issued by respondent no.2-MSRDC therefore cannot be said to be arbitrary and unjust.

7. The present petition, therefore, has no merit. Apart from this, the submissions as raised and as denied by the respondents, unless decided by substantial evidence on record, it is difficult to entertain the present petition on such disputed facts and circumstances. On this count also the present petition deserves to be dismissed. However, the petitioner is at liberty to seek an appropriate remedy under the law.

8. Taking all this into account, the present petition is dismissed. The interim order of status quo granted is also stands vacated. No costs.

(F.I. REBELLO, J.)

(ANOOP V. MOHTA,J.)